

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ZHAOYIN WANG,
Plaintiff,

v.

BETA PHARMA, INC., DON ZHANG,
AND ZHEJIANG BETA PHARMA
CO., LTD.,
Defendants.

No. 3:14CV1790 (VLB)

MARCH 20, 2015

**EMERGENCY MOTION FOR ENTRY OF
PROTECTIVE ORDER FOR MOTION TO DISQUALIFY COUNSEL**

Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Paragraph 19 of this Court's Standing Protective Order dated December 1, 2014 (the "Standing Order") [D.E. #10], defendants Beta Pharma, Inc. ("Beta Pharma") and Don Zhang ("Dr. Zhang") (collectively, "Defendants") hereby move for the entry of a Protective Order to govern litigation of the Motion to Disqualify Counsel that they will shortly file, seeking disqualification of Jonathan Katz, Esq. ("Katz") from representing plaintiff Zhaoyin Wang in this action. Pursuant to Local Rule 7(a)(3), for good cause explained below, Defendants designate this Motion as one seeking emergency relief. A copy of the proposed Order (the "Proposed Order") is attached hereto as Exhibit A.

In summary, Defendants have recently obtained facts that reveal that Beta Pharma's former attorney, Lance Liu, Esq. ("Liu"), represented Beta Pharma on the subject matter of this action and thereby had access to its relevant confidential and privileged information. Now, Liu has multiple associations with

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Katz, including a consulting relationship with Katz in this case, pursuant to which Liu corresponded with Plaintiff regarding filing this lawsuit, and a joint representation with Katz of several persons suing Defendants in other actions (before this Court and the Superior Court of Connecticut). These associations create opportunities for the disclosure of Defendants' confidential and privileged information to Katz. Under Connecticut law, that opportunity for disclosure taints this litigation and requires disqualification of Katz. See *Goldenberg v. Corporate Air, Inc.*, 189 Conn. 504, 512 (1983), *overruled in part on other grounds Burger & Burger, Inc. v. Murren*, 202 Conn. 660 (1987). Consequently, Defendants will shortly file a Motion to Disqualify Counsel (the "Motion to Disqualify"), seeking to disqualify Katz and his firm from representing Plaintiff.

In order to establish that Liu worked for Defendants on the subject matter of this action, Defendants intend to submit for the Court's consideration, as exhibits supporting that Motion, certain documents that contain their confidential and privileged information. The Proposed Order will avoid any waiver of their privileges with respect to such information, and prevent Defendants' privileged information from being used against them in the litigation of this case's merits. The Order that Defendants seek here is substantively identical to an Order entered by this Court (Haight, J.) in the same – that is, in a case where Beta Pharma moved to disqualify Katz because he teamed up with Liu against Beta Pharma.

I. Relevant Facts¹

Liu represented Beta Pharma from approximately July 2011 until November or December 2012. During that period, he had unfettered access to Beta Pharma's confidential information and represented Beta Pharma on a broad array of issues, including corporate issues, tax issues, and contract issues.

In the present matter, Plaintiff alleges that, in March 2010, he entered into an agreement (the "2010 Agreement") that had two components. First, he would become Beta Pharma's Chief Scientific Officer in exchange for a salary and stock in Beta Pharma and Zhejiang Beta Pharma Co., Ltd. ("ZJBP"), a Chinese company. Complaint, First Count, ¶ 10. Second, Plaintiff contends that the contract contemplated the establishment of Beta Pharma Canada ("BPC"), a Canadian corporation in which Plaintiff would own 51% of the stock and Zhang would own 49%. *Id.* at ¶ 11. According to Plaintiff, Beta Pharma and Zhang breached the 2010 Agreement by, among other things, failing to pay Plaintiff his salary and stock, and by discontinuing funding of BPC. *Id.* at ¶ 12; Complaint, Second Count, ¶ 15.

Last week, Defendants uncovered various emails and documents establishing that Liu worked on, and even re-drafted, the alleged 2010 Agreement. He also counseled Beta Pharma on tax issues associated with BPC and the 2010

¹ Defendants will provide a more detailed explanation of, and evidence for, the following facts in the Memorandum of Law that they will file in support of their Motion to Disqualify.

Agreement, and worked on dissolving the 2010 Agreement. In short, Liu's representation of Beta Pharma concerned the same matter as this action.

Liu has now teamed up with Katz in this case against Defendants, his former clients. In April 2014, Liu executed a consulting agreement pursuant to which Liu would act as a liaison between Katz and various plaintiffs with claims purported against Beta Pharma (copy attached as Exhibit B).

Emails confirm that Liu did, in fact, consult with Katz in this capacity (copies attached as Exhibit C). Less than three weeks after signing that consulting agreement, on May 14, 2014, Plaintiff sent Liu an email titled "My case against Don(betaPharma)," delineating the facts of the present lawsuit. *Id.* The May 14 email included the 2010 Agreement as an attachment. *Id.* Ten days later, on May 24, 2014, Plaintiff sent an email to Zhang stating, "I am under pressure to sign an attorney service agreement and it would be irreversible once I sign the service contract with the attorney. I certainly hope we can resolve everything by some other means instead of going through legal procedures." *Id.* Liu served as the liaison between Plaintiff and Katz, and the information found its way into the Complaint in this case. It bears reiterating that Liu is consulting with Katz, adversely to Defendants, on the same matters as Liu's prior representation of Beta Pharma.

Immediately upon obtaining information last week regarding Liu's involvement in the 2010 Agreement, Defendants asked Katz to withdraw from his representation of Plaintiff. Today, Katz emailed Beta Pharma's counsel indicating that he will not voluntarily withdraw from representing Plaintiff. Consequently,

Defendants will move to disqualify Katz as soon as a Protective Order is in place that will permit them to submit with that Motion the documents that establish the necessity of disqualification.

This is not the first (or even second) time that Liu has switched sides and worked against Defendants, his former clients. Liu also became involved in several parties' lawsuits against Beta Pharma. Along with Katz, Liu jointly representing the plaintiffs in two other actions against Beta Pharma and Zhang: Xie v. Beta Pharma, Inc., et al., No. NNH-CV-13-6035116 (Conn. Super. Ct.) (the "Xie Action") and Shao, et al. v. Beta Pharma, Inc., et al., No 3:14-CV-01177 (D. Conn.) (the "Shao Action"). See Liu Motion to Quash (copy attached as Exhibit D), at pp. 8–9, in which Liu asserts that he and Katz are engaged in a joint representation of the plaintiffs in the Xie and Shao Actions. As here, those cases concern the same matters on which Liu worked when representing Beta Pharma. Consequently, Beta Pharma filed a motion in each of those actions seeking to disqualify Katz from representing the plaintiffs. Those motions are currently pending. In the Shao Action, as here, Defendants sought to submit documents containing their privileged and confidential information in order to establish that Liu had worked on the underlying transactions. There, too, they needed to protect those documents from being used against them, and needed to be able to submit the documents to the Court, and serve them on the plaintiffs' counsel, without waiving their privileges with respect to those documents.

Therefore, Defendants sought a Protective Order governing litigation of the motion to disqualify in the Shao Action. On January 16, 2015, Judge Haight

entered a Protective Order for Motion to Disqualify Counsel granting Defendants the protections at issue (the "Shao Protective Order"). A copy of that Order is attached hereto as Exhibit E. On the same date, Judge Haight issued an Opinion on Proposed Protective Orders, in which he recited Defendants' explanation of their need for such an order, and effectively adopted that concern as the basis for the Court's Order. A copy of that Opinion is attached hereto as Exhibit F.

Defendants' present application only asks that this Court enter the same Protective Order as the Shao one entered by Judge Haight. This will simultaneously allow for full disclosure on, and analysis of, Liu's prior representation, while protecting Defendants' confidential and privileged information. Furthermore, entering the Protective Order on an expedited basis will allow for immediate consideration of the conflict issues, which are tainting this litigation and prejudicing Defendants. Conversely, the Protective Order will not prejudice Plaintiff in any way.²

II. Authority for Supplemental Protective Order

This Court has the authority to manage discovery in a civil suit, including the power to enter protective orders limiting discovery as the interests of justice require. Securities & Exchange Comm'n v. Razmilovic, 738 F.3d 14, 26 (2d Cir. 2013). Although a Standing Order is in place in this case, the Standing Order states that "[t]he foregoing is entirely without prejudice to the right of any party to apply to the Court for a further Protective Order relating to Designated Material

² Before filing this Motion, Defendants' counsel ascertained that Plaintiff opposes the issuance of the Proposed Order.

... or for modification of this Order.” Standing Order ¶ 19. As subsequently discussed, a supplemental protective order is necessary for proper adjudication of the Motion to Disqualify.

III. The Requested Protective Order is Necessary to Properly Litigate the Motion to Disqualify

As Defendants will explain in more detail in their Memorandum of Law on the Motion to Disqualify, the fact that Liu worked for Beta Pharma on the same or substantially the same matter as the present action is sufficient to warrant disqualification of Katz, given the associations between the two. See, e.g., Goldenberg, 189 Conn. at 504.³ Such disqualification is required to preserve the spirit of the Rules of Professional Conduct, because the associations between Liu and Katz create a presumption that Beta Pharma’s confidential information has been disclosed to Katz. Goldenberg, 189 Conn. at 512.

To establish that Liu worked for Beta Pharma on the same or substantially the same matter, Defendants seek to submit to the Court (and serve on Plaintiff’s counsel) the documents evidencing such work. However, because those documents concern Liu’s representation of Beta Pharma on this matter, they contain Defendants’ confidential and privileged information. In the absence of a Protective Order, Defendants would thereby risk waiving their privileges with

³ This Court has adopted the State of Connecticut’s Rules of Professional Conduct as the relevant standard of conduct, and Connecticut state-court caselaw as well as federal caselaw is pertinent to the interpretation of those Rules. L.R. 83.2(a).

respect to such information in this and other litigation, and they would risk Plaintiff using such privileged information against them when litigating the merits of the case. That would defeat the very purpose of the Motion to Disqualify, which is to protect Defendants from being injured by the use of their confidential and privileged information against them.

This concern arose in the Shao Action under exactly the same circumstances. In order to deal with this concern, Judge Haight issued the Shao Protective Order, which governs litigation of the disqualification motion, and contains provisions that avoid the waiver of Defendants' privileges. The Protective Order that Defendants seek in the present Motion is substantively identical to the Shao Protective Order. The Proposed Order, like the Shao Protective Order, contains several provisions not present in the Standing Order that enable Defendants to submit the documents in question in litigating their Motion to Disqualify. The most important provisions are the following:

(1) The Proposed Order permits a party that discloses documents in order to litigate the Motion to Disqualify to designate as "Attorneys' Eyes Only Material" documents that contain attorney-client privileged information, information protected by work product immunity, and information protected by attorney-client confidentiality under Rule of Professional Conduct 1.6 arising out of, or in connection with, a legal representation. See Shao Protective Order ¶ 2, Proposed Order ¶ 2. The Standing Order permits such designation only for information that is sensitive because of the danger of its disclosure to a competitor. Standing Order ¶ 4. Thus, the Proposed Order permits Defendants to

apply “Attorneys’ Eyes Only” protection to the documents at issue in the Motion to Disqualify.

(2) The Proposed Order limits the use of “Confidential” or “Attorneys’ Eyes Only” material disclosed in connection with the Motion to Disqualify, by providing that such material shall not be used by the parties for any purpose other than litigating the Motion to Disqualify. See Shao Protective Order ¶ 3, Proposed Order ¶ 3. Thus, it enables Defendants to submit these documents to the Court, and serve them on Plaintiff’s counsel, without creating the danger that such documents will be used against them in other aspects of this litigation or in other litigation.

(3) The Proposed Order provides, pursuant to Rule 502(d) of the Federal Rules of Evidence, that any disclosure of information or materials that are protected by the attorney-client privilege or the work product doctrine in connection with the Motion to Disqualify shall not, for any purposes, be deemed a waiver of the attorney-client privilege or the work product doctrine in this or any other proceedings. See Shao Protective Order ¶ 13, Proposed Order ¶ 13. This eliminates the danger that disclosure of the documents at issue will waive Defendants’ privileges with respect to them. Thus, it avoids placing Defendants in the position of either litigating the Motion to Disqualify and waiving privileges, or permitting Katz’s conflicted representation to continue.

(4) The Proposed Order requires a party that submits “Confidential” or “Attorneys’ Eyes Only” material to the Court in connection with the Motion to Disqualify to follow the procedures in Rule 5(e)(4)(d) of the Local Rules of this

Court for submitting such documents to chambers under seal. See Shao Protective Order ¶ 10, Proposed Order ¶ 10 (5). The Proposed Order provides that a party's designation of a document as "Confidential" or "Attorneys' Eyes Only" shall not of itself create any new privilege or restore any waived privilege, or create or restore any basis for disqualification of Plaintiff's counsel in this or other actions. See Shao Protective Order ¶ 6, Proposed Order ¶ 6.

(5) The Proposed Order, in contrast to the Standing Order (¶ 5(b)), does not permit "Attorneys' Eyes Only" material to be disclosed to witnesses or proposed witnesses. See Shao Protective Order ¶ 5, Proposed Order ¶ 5. This avoids another possible source of waiver of privileges or breach of confidentiality.

The Proposed Order would apply only to documents disclosed in litigation of the Motion to Disqualify, which, again, uniquely concerns confidential and privileged information. It would not supersede the provisions of the Standing Order with respect to the discovery process in this action in general.

The justifications for Judge Haight's issuance of the Shao Protective Order apply identically to the present situation. There is no reason why the standards for the disclosure of information in connection with the Motion to Disqualify in the present action should differ from the standards for such disclosure in the Shao Action. Again, Defendants need a mechanism for disclosing documents relevant to the Motion to Disqualify without waiving any privileges. The Proposed Order provides such a mechanism, facilitates proper adjudication of the conflict issues, avoids waiver of privileges, and does not prejudice Plaintiff in any way. Since the

Proposed Order will serve these purposes and the interests of justice, this Court should enter the Proposed Order.

IV. Need for Expedited Consideration

“For good cause shown in the motion, a party may request expedited consideration of the motion by the Court by designating the motion as one seeking ‘emergency’ relief.” Loc. R. Civ. P. 7(a)(3).

Defendants have filed this Motion within approximately seven days of discovering the documents establishing the necessity for disqualifying Katz. Prompt action is necessary because Defendants cannot file their Motion to Disqualify, and the Memorandum and exhibits supporting it, until the Protective Order is issued enabling them to file the documents discussed above without risking waiver of their privileges. While this Motion is pending, Katz continues to represent Plaintiff, and the danger of Defendants’ confidential and privileged information being disclosed and used against them continues. For that reason, Defendants respectfully request that the Court grant expedited consideration to this Motion and grant the requested Protective Order on an expedited basis. Defendants are prepared to file their Motion to Disqualify immediately upon this Court’s entry of the Proposed Order.

**DEFENDANTS BETA PHARMA, INC. AND
DON ZHANG,**

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2015 a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/

Michael G. Caldwell (ct 26561)

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ZHAOYIN WANG,
Plaintiff,

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BETA PHARMA, INC., DON ZHANG,
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CO., LTD.,
Defendants.

No. 3:14CV1790 (VLB)

MARCH __, 2015

PROTECTIVE ORDER FOR MOTION TO DISQUALIFY COUNSEL

Defendants Beta Pharma, Inc. and Don Zhang ("Defendants") have filed a Motion to Disqualify Jonathan Katz, Esq. from representing Plaintiff in this case. Defendants contend that they had an attorney-client relationship with Attorney Lance Liu ("Liu") of the New Jersey bar, arising out of Liu's performance of legal services for Defendants between approximately July 2011 and approximately November 2012. Defendants contend that documents and/or information material to the Motion to Disqualify are protected by the attorney-client privilege, work product immunity, attorney-client confidentiality under Rule of Professional Conduct 1.6, and/or are otherwise confidential. Defendants wish to offer these documents and/or information as evidence with respect to the Motion to Disqualify, while otherwise preserving their claims of attorney-client privilege, work product immunity, attorney-client confidentiality under Rule of Professional Conduct 1.6, and confidentiality. Plaintiff may also wish to use documents and/or information which either Plaintiff or Defendants contend are protected by the

attorney-client privilege, work product immunity, attorney-client confidentiality under Rule of Professional Conduct 1.6, and/or confidentiality. Accordingly, the Court orders as follows:

1. In litigating the Motion to Disqualify, any Party to the above-entitled action and any third party shall have the right to designate as "Confidential" any information, document, or thing or portion of any information, document or thing containing: (a) trade secrets, competitively sensitive technical, marketing, financial, sales or other confidential business information, including, but not limited to, internal business practices that would include trade secrets or confidential and/or proprietary information; (b) private or confidential personal information; or (c) information which the producing Party otherwise believes in good faith to be entitled to protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure ("Confidential Material"). Any Party to the above-entitled action who produces, discloses, or seeks to file any Confidential Material, including without limitation, any information, document, thing, pleading, testimony, deposition transcript, exhibit and/or any other such so-designated materials shall mark the same with the foregoing or similar legend:

"CONFIDENTIAL" or "CONFIDENTIAL – SUBJECT TO
SUPPLEMENTAL PROTECTIVE ORDER DATED _____, 2015"

2. In litigating the Motion to Disqualify, any Party to the above-entitled action and any third party shall also have the right to designate as "Attorneys' Eyes Only" any information, document, or thing, or portion of any information, document or thing that contains:

- a. highly sensitive business or personal information, the disclosure of which is likely to cause significant harm to an individual or to the business or competitive position of the Designating Party;
- b. attorney-client privileged information;
- c. information protected by work product immunity; and/or
- d. information protected by attorney-client confidentiality under Rule of Professional Conduct 1.6 arising out of, or in connection with, a legal representation.

("Attorneys' Eyes Only Material"). Any Party to the above-entitled action or any third party in connection with this litigation who is covered by this Protective Order, who produces, discloses, or seeks to file any Attorneys' Eyes Only Material, including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony deposition transcript, exhibit and/or any other such so-designated materials, shall mark the same with the foregoing or similar legend:

**"ATTORNEYS' EYES ONLY" or "ATTORNEYS' EYES ONLY
– SUBJECT TO SUPPLEMENTAL PROTECTIVE ORDER DATED
_____, 2015"**

3. All Confidential and/or Attorneys' Eyes Only Material produced shall be used by the Parties solely for purposes of litigating the Motion to Disqualify and any appeal of a decision on the Motion to Disqualify, subject to the terms of this Order. Such Material shall not be used by the Parties or their counsel for any business, commercial, competitive, personal or other purpose, shall not be used in the litigation for any purpose other than the Motion to Disqualify, and shall not

be disclosed, except in accordance with the provisions of this Protective Order, unless and until the restrictions herein are removed either by written agreement of counsel for the Parties, or by Order of the Court.

4. Confidential Material may be disclosed only to the following individuals and/or entities under the following conditions:

- a. Outside counsel (herein defined as any attorney at the law firms representing the Parties in this action) and relevant in-house counsel for the Parties;
- b. Outside experts or consultants retained by Outside counsel for purposes of the Motion to Disqualify, provided they have signed an "Agreement To Be Bound By Protective Order" in the form attached hereto as Exhibit A, or as otherwise Ordered by the Court;
- c. Secretarial, paralegal, clerical, duplicating and data processing personnel of the foregoing;
- d. In connection with the Motion to Disqualify, the Court and court personnel, including, but not limited to, stenographers transcribing the testimony or argument at any hearing on the Motion to Disqualify;
- e. Any witness who provides testimony in connection with the Motion to Disqualify;
- f. Vendors retained by or for the Parties to assist in preparing for any hearing on the Motion to Disqualify, including, but not limited to, court reporters, litigation support personnel, individuals retained to

prepare demonstrative and audiovisual aids for use in the courtroom, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials;

- g. The Parties. In the case of parties that are corporations or other business entities, "Party" shall mean directors, officers, partners and employees of the Parties, or any subsidiaries or affiliates thereof, as well as any and all personnel who are, or may be, required to participate in decisions with reference to the above-entitled action; and
- h. Any other person and/or entity only upon Order of the Court or by the written consent of the Parties.

5. Material produced and/or marked as Attorneys' Eyes Only may only be disclosed to:

- a. Outside counsel for the Parties;
- b. secretarial, paralegal, clerical, duplicating, and data processing personnel of Outside counsel;
- c. Outside experts or consultants retained by Outside counsel for purposes of the Motion to Disqualify, provided they have signed an "Agreement To Be Bound By Protective Order" in the form attached hereto as Exhibit A, or as otherwise Ordered by the Court;
- d. Such other persons as counsel for the Parties agree in writing in advance of such disclosure, or as Ordered by the Court; and

e. In connection with the Motion to Disqualify, the Court and court personnel, including, but not limited to, stenographers transcribing the testimony or argument at any hearing on the Motion to Disqualify.

6. A Party's designation of any document as Confidential or Attorneys' Eyes Only Material shall not of itself create any new privilege, or restore any privilege that has previously been waived by the Designating Party. Nor will the Designating Party claim that its disclosure of Confidential or Attorneys' Eyes Only Material pursuant to this Order gives rise to any new basis for disqualification of the Receiving Party's counsel or law firm in this case, or in any other case in which Receiving Party's counsel or law firm are or may become adverse to the Designating Party or its affiliates, including specifically Guojian Xie v. Beta Pharma, et al. , Superior Court, Complex Litigation at Waterbury, Docket No. UWY-CV13-6025526S, Shao v. Beta Pharma, et al., United States District Court, District of Connecticut Civil No. 3:14-cv-01177-CSH, and Beta Pharma et al., v. Liu, Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-2040-14. For the avoidance of doubt, nothing in this Order is intended to or shall in any way prohibit or limit any Party from seeking the disqualification of opposing counsel on grounds independent of the disclosure of information pursuant to this Order, including, but not limited to, grounds which arose prior to the entry of this Order and violations of this Order, and nothing in this Order is intended to or shall in any way impair the grounds for disqualification already asserted by any Party hereto.

7. The Designating Party will use reasonable care to avoid designating as Confidential or Attorneys' Eyes Only any document that does not need to be designated as such.

8. The Receiving Party may submit a request in writing to the Designating Party that the Confidential or Attorneys' Eyes Only designation be modified or withdrawn. If the Designating Party does not agree to the redesignation within ten days, the Receiving Party may apply to the Court for relief. Upon any such application, the burden shall be on the Designating Party to show why the designation is proper. Before serving a written challenge, the objecting party must attempt in good faith to meet and confer with the Designating Party in an effort to resolve the matter. The document shall remain Confidential, Attorneys' Eyes Only, and/or sealed until the final determination of any challenge to its designation.

9. In the event that a Party believes that any testimony or argument from a hearing on the Motion to Disqualify contains Confidential or Attorneys' Eyes Only Material, such Party may designate such testimony or argument as Confidential or Attorneys' Eyes Only by: (i) stating orally on the record on the day the testimony or argument is given that portions of the testimony and/or argument are deemed Confidential or Attorneys' Eyes Only; or (ii) sending written notice to all Parties within ten days after receipt of the transcript setting forth the page and line numbers of the testimony and/or argument to be designated Confidential or Attorneys' Eyes Only, which period may be extended by agreement of the Parties. During these ten days, no such transcript shall be

disclosed to any individuals or entities other than the individuals permitted access to Attorneys' Eyes Only Material under this Protective Order. Upon being informed that certain portions of a hearing are to be designated as Confidential or Attorneys' Eyes Only, all Parties shall immediately cause each copy of the transcript in their custody or control to be appropriately marked and limit disclosure of that transcript in accordance with the terms and provisions of this Protective Order. Until expiration of the ten day period, all testimony and argument on the Motion to Disqualify shall be deemed Attorneys' Eyes Only and treated as if so designated.

10. If the need arises during litigation of the Motion to Disqualify for any Party to disclose Confidential or Attorneys' Eyes Only Material to the Court, the Party may only do so under seal. The Party seeking to disclose such information must, pursuant to Rule 5(e)(4)(d) of the Local Rules of the U.S. District Court for the District of Connecticut, submit the documents sought to be sealed to chambers for in camera consideration and serve on all counsel of record copies of the documents sought to be sealed and shall file a motion to seal, a memorandum and supporting documents. The motion to seal shall include a statement of the moving counsel that (1) he or she has inquired of opposing counsel and there is agreement or objection to the motion to seal, or that (2) despite diligent effort, he or she cannot ascertain opposing counsel's position.

11. To the extent consistent with applicable law, the inadvertent or unintentional disclosure of Confidential and/or Attorneys' Eyes Only Material that should have been designated as such, regardless of whether the information,

document or thing was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part, of a Party's claim of confidentiality, either as to the specific information, document or thing disclosed or as to any other material or information concerning the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by notifying in writing counsel for all Parties to whom the material was disclosed that the material should have been designated Confidential and/or Attorneys' Eyes Only within a reasonable time after disclosure. Such notice shall constitute a designation of the information, document or thing as Confidential and/or Attorneys' Eyes Only under this Protective Order.

12. If any Party in receipt of Confidential or Attorneys' Eyes Only Material is served with a subpoena, request for production of documents, or other similar legal process in another proceeding (including any proceeding before any other court, regulatory agency, law enforcement or administrative body) seeking such Confidential or Attorneys' Eyes Only Material, and that Party does not hold the privilege, immunity, and/or right to confidentiality, that Party shall give prompt written notice to the Party holding such privilege, immunity, and/or right, through its undersigned counsel, sufficiently in advance of any disclosure to provide the Party holding such privilege, immunity, and/or right with a reasonable opportunity to assert any objection to the requested production. If the Party holding such privilege, immunity, and/or right objects to the production, that Party's Confidential or Attorneys' Eyes Only Material shall not be produced except (i) pursuant to an Order by the Court requiring compliance with the

subpoena, request for production, or other legal process, or (ii) if such subpoena, request or legal process is of the kind where the obligation to produce in a timely manner cannot be excused or deferred by interposing a written objection. The Party holding such privilege, immunity, and/or right shall be solely responsible for asserting any objection to the requested production. Nothing herein shall be construed as requiring the recipient or anyone else covered by this Protective Order to challenge or appeal any such subpoena, request, legal process or order requiring production of Confidential or Attorneys' Eyes Only Material covered by this Protective Order, or to subject itself to any penalties for noncompliance with any such Order, or to seek any relief from this Court.

13. Pursuant to F.R.E. 502(d), any disclosure of information or materials that are protected by the attorney-client privilege or the work product doctrine in connection with the Motion to Disqualify shall not, for any purposes, be deemed a waiver of the attorney-client privilege or the work product doctrine in this or any other proceedings.

14. If a Party intends to rely upon any documents when litigating the Motion to Disqualify, the party must either:

- a. Comply with the sealing procedures referenced in Paragraph 10 above; or
- b. Disclose the documents to opposing counsel at least four (4) business days prior to filing the papers with the Court in connection with the Motion to Disqualify, so that the opposing Party may make

an appropriate designation of the documents and file a Motion to Seal, if necessary.

15. This Protective Order is being entered without prejudice to the right of any Party to move the Court for modification or for relief from any of its terms.

16. This Protective Order shall survive the termination of this action and shall remain in full force and effect unless modified by an Order of this Court or by the written stipulation of the Parties filed with the Court.

17. Upon final conclusion of the Motion to Disqualify, each Party and its outside counsel and/or any other individual subject to the terms and provisions of this Protective Order shall be under an obligation to assemble and to return to the originating source all originals and marked and unmarked copies of documents and things containing Confidential and/or Attorneys' Eyes Only Material and to destroy, should such source so request, all copies of Confidential and/or Attorneys' Eyes Only Material that contain and/or constitute attorney work product as well as excerpts, summaries, notes and digests revealing Confidential and/or Attorneys' Eyes Only Material; provided, however, that counsel may retain complete copies of all transcripts and pleadings including any exhibits attached thereto for archival purposes, subject to the provisions of this Protective Order and Confidentiality Agreement. If a Party requests the return of Confidential and/or Attorneys' Eyes Only Material from the Court after the final conclusion of the Motion to Disqualify, including the exhaustion of all appeals therefrom and all related proceedings, the Party shall file an appropriate motion seeking such relief.

18. A Party may de-designate any Confidential and/or Attorneys' Eyes Only Material that the Party, itself, has previously designated.

IT IS SO ORDERED.

Vanessa L. Bryant
United States District Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ZHAOYIN WANG,
Plaintiff,

V.

**BETA PHARMA, INC., DON ZHANG,
AND ZHEJIANG BETA PHARMA
CO., LTD.,
Defendants.**

No. 3:14CV1790 (VLB)

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER AND CONFIDENTIALITY
AGREEMENT

I, _____, being duly sworn, under the penalties of perjury, state that:

1. My address is _____.
2. My present employer is _____ and the address of my present employment is _____.
3. My present occupation or job description is _____.
4. I hereby certify my understanding that certain Confidential or Attorneys' Eyes Only Material is being provided to me pursuant to the terms and provisions of the Protective Order and Confidentiality Agreement dated _____ in connection with the above-entitled action.

5. I have carefully read and understood the provisions of the Protective Order and Confidentiality Agreement in the above-entitled action, and I hereby agree that I will comply with all terms and provisions of the Protective Order and Confidentiality Agreement.

6. I will hold in confidence and not disclose to anyone not so-designated under the terms and provisions of the Protective Order and Confidentiality Agreement Confidential or Attorneys' Eyes Only Material, or any words, summaries, abstracts, or indices of Confidential or Attorneys' Eyes Only Material disclosed to me.

7. I will limit use of Confidential or Attorneys' Eyes Only Material disclosed to me solely for purpose of the prosecution or defense of the Motion to Disqualify in the above-captioned action.

8. No later than the final conclusion of this litigation, I will return and/or certify that I have returned all Confidential or Attorneys' Eyes Only Material, and any non-privileged words, summaries, abstracts, and indices thereof, which have come into my possession, as well as any materials, documents, information and/or things which I have prepared relating thereto, to counsel for the Party for whom I was employed or retained.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____ Signature: _____
Printed name: _____
Title and Company: _____
Address: _____

EXHIBIT B

LAW OFFICES OF
Jacobs & Dow, LLC

350 ORANGE STREET
POST OFFICE BOX 606
NEW HAVEN, CONNECTICUT 06503-0606

TELEPHONE (203) 772-3100
FAX (203) 772-1691
www.JacobsLaw.com

WILLIAM F. DOW, III¹
JONATHAN KATZ²
ROSEMARIE PAINE³
CHARLES R. DOUTHAT
JOSEPH J. PACTOR
MICHAEL J. DOLAN

OF COUNSEL
HOWARD A. JACOBS
RICHARD EMANUEL
TRISHA M. MORRIS

¹Also admitted in Washington D.C.
²Managing Partner
³Board Certified Civil Trial Specialist
⁴Also admitted in New York

FILE NUMBER JDB13-1298

April 24, 2014

Privileged attorney work product for consultant not retained to testify—Not discoverable

Dr. Lance Liu
(Via email)

Dear Lance:

This agreement sets forth the terms under which you will perform consulting services as a non-disclosed expert for Jacobs & Dow, LLC in connection with Beta Pharma, Inc. matters. Please sign and return a copy of this agreement.

1. You will act as liaison between our firm and the clients we represent who have matters against Beta Pharma, Inc., Don Zhang and other potential defendants. You will assist them in seeking and obtaining representation from our firm, and assist us in representing them, including dealing with international, cultural and linguistic matters.

2. You will not have any in-court responsibility whatsoever with respect to any of these claims. You will not be identified on court papers or disclosed as an expert witness. Our firm will have full responsibility for the conduct of all litigation.

3. You will maintain in strictest confidence all information you obtain from us in connection with this representation, and not disclose that information to anyone other than our client to whom the information pertains.

4. You agree to notify us in advance of undertaking any representation that might create a conflict of interest for you or for us.

Jacobs & Dow, LLC

5. In exchange for work you perform hereunder, we will pay you a consulting fee equal to 24% of any contingent fee we earn from representing any Beta Pharma investors other than Guojian Xie.

If we choose not to represent an investor or do not earn a fee from the representation we will not owe you anything with respect to that case.

6. Dr. Guojian Xie is not included in this agreement and we do not owe you any portion of any attorney's fee we earn from representing Dr. Xie.

7. Our firm will not advance costs for you. You are responsible for your own costs and expenses in performing the work contemplated by this consulting agreement.

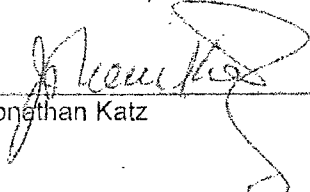
8. In the event that any dispute arises with any client concerning the payment of a contingent consulting fee to you, we will escrow the amount of the fee until such time as the dispute is resolved.

9. This agreement is made in Connecticut, in accordance with the laws of Connecticut, and venue for resolution of any disputes arising hereunder is proper only in the Superior Court for the Judicial District of New Haven, Connecticut.

Very truly yours,


JACOBS & DOW, LLC

By


Jonathan Katz

JK/da

Read, Understood and
Agreed to:


Attorney Lance Liu

04/26/2014
Date

LL 6204

EXHIBIT C

Gmail - My case against Don(betaPharma)

<https://mail.google.com/mail/u/0/?ui=2&ik=486fdd56f2&view=pt&cat=g..>



Lance Liu <lanceliu2000@gmail.com>

My case against Don(betaPharma)

1 message

z. wang <zwang.ca@gmail.com>

Wed, May 14, 2014 at 10:51 AM

To: Lance Liu <lanceliu2000@gmail.com>

Hi Lance,

Attached is the employment agreement that I had with Don (BetaPharma) back in year 2010. A few key points I should emphasize for you:

1. my career was deeply effected by the attached offer which persuaded me to decline quite a few very good offers;
2. I founded Beta Pharma Canada inc. with Don. With his consensus, Beta Pharma Canada Inc was structured as the ownership: Zhaoyin Wang (51%), Don Zhang (49%), Inorder to gain the R&D tax credit from the Canadian government;
3. Don invested a total of ` \$400,000.00 US from October 2010 to June 2011;
4. I was never paid any salary during my entire service to the company;
6. Don breached the agreement without fulfill his obligation to me and beta Pharma Canada Inc.
7. I was never released from my position of CSO of BetaPharma.

Please take a look at the attached document and If you need more Information or have any questions, please don not hesitate to contact me.

best,

Zhaoyin



Zhaoyin Wang-BetaPharma Employment agreement.pdf
1619K

Partnership Offering to Dr. Zhaoyin Wang by Betapharma, Inc.

Date: March 22th, 2010




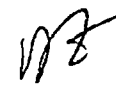

Name: Zhaoyin Wang, Ph. D.

Address: 72 Denault, Kirkland, Quebec H9J3X3, Canada

Dear Dr. Zhaoyin Wang,

Beta Pharma Inc. is very pleased to offer a partnership to you. We are very excited about the potential that you will bring to our organization!

As we discussed during your visiting and phone conversation, the partnership package is described as the followings:

-  1) You will be the CSO (Chief Scientific Office) of Beta Pharma (group) for our organization. You will be responsible for overall Research and Development efforts of whole Betapharma group including our joint venture with other organizations such as Zhejiang, Anhui, and Shanghai, and Betapharma USA; you will also be partially involved in company fund raising, in-license in and out-license out, business development, the preparation of business plan and research grant proposals
-  2) You will be awarded initially with 2 million shares (about 2 % of company value). Your total number shares will be increased annually as company gets better and grows due to your contribution and we will make adjustment from this starting point: A formal agreement on the stock ownership will be signed separately. The ownership of the stock will be increased annually at 10-25% rate based on company operation and financial situation;
-  3) You will be awarded with 3 million shares of current Zhejiang Betapharma stock (Zhejiang Beta total number of shares is 300 million). Your total ownership of Zhejiang Betapharma is one percent. Following Zhejiang Betapharma company rules and regulation, upon certain point such as company go public, the transaction will be executed following the detailed procedure that will be described in Zhejiang Betapharma stock ownership policy.
-  4) Your annual salary will be 850,000 RMB Yuan. And about 400,000 Yuan will be paid to you in the form of USA dollars from the US source, that is, \$60,000.00 ($\$60,000 \times 6.83 = 409,800 \text{ yuan}$) annual salary paid from Betapharma USA; 450,000 Yuan will be paid to you in the form of Chinese RMB Yuan from the Chinese source. of which 350,000 Yuan is tax-free and the remaining 100,000 Yuan will be subjected as taxable income in China. Beta Pharma will guarantee 440,000 Yuan income from the Chinese source. The overall salary will be raised 5-15% annually based on company operation and financial situation;
-  5) You will be awarded with 12.5% of net profit for all generic drugs you brought to market;



- 6) For your new patent ideas and so on, we will following the method described as the following in Yinxiang Wang's offer letter to you:

根据你对一些项目的设想，你先拟订 1-4 个项目，专门为你注册个公司，你兼任该公司的 CEO。我们共同讨论后开始在现有的平台上实施，由公司投入。下面是一份对项目合作的初步设想：

BetaPharma – BP 方; Zhaoyin Wang – ZW 方; 项目执行团队 – C 方

1. 为项目单独注册一公司 (NEWCO)，将该项目的知识产权等转入 NEWCO。项目的运作依然在现有框架下运行。
2. BP 将负责投资并将项目推进到在中国的临床批文为结点，其中包括完成在中国，美国以及在 PCT 的专利申请。作为回报，BP 拥有项目的全球权利的 65%，即拥有 NEWCO 65% 的股份。
3. ZW 将在合作初始负责提供项目，以及 ZW 拥有的与项目相关的所有能直接导致专利申请的信息与设计，并确保该专利申请的有效性和真实性。ZW 并将继续负责与项目相关的药物研发方面的研究与设计，包括在此期间的相关的技术支持。作为回报，ZW 拥有项目的全球权利的 20%；即拥有 NEWCO 20% 的股份；其它 15% 股份由执行项目的团队所有（暂由 C 方代持股，具体比例由 BP 董事会商定，分配依据执行团队的贡献）。
4. 在双方同意的情况下，双方可以找任意第三方投资，但是在拿到中国的临床批文前 ZW 和 C 方所有的股份保持不变；由该项目申请的国家资助均归 NEWCO 所有。
5. 项目以在中国的临床批文为结点，在拿到中国的临床批文后，如果找到第三方投资，公司及项目的所有股份则应按比例同时稀释。如果转让出去的话，BP 有 65% 的利益，ZW 有 20% 的利益，C 方有 15% 的利益；如 BP 愿意保留该项目，则 BP 有优先权以同样价格获得 ZW 及 C 方的股份，而同时 ZW 及 C 方有权任意选择部分或全部套现。
6. 项目在拿到中国的临床批文后，在转让不出也无第三方介入的条件下，如果 BP 愿意继续追加投资在中国作临床试验，BP 将负责将项目推进到完成临床二期并拿到临床三期批文为第二个结点。作为回报，BP 拥有 NEWCO 72% 的股份；ZW 有 16% 的股份，C 方有 12% 的股份。
7. 如 BP 愿意继续追加投资在中国作临床试验，BP 将负责将项目推进到完成临床三期，直至获得新药证书和生产批文。作为回报，BP 拥有 NEWCO 78% 的股份；ZW 有 12% 的股份，C 方有 10% 的股份。
8. 如 BP 负责投资将项目推进在美国 FDA 拿到临床批文，或者以至于拿到新药证书，作为回报，在每个阶段，BP 所持股份将相应增加同等比例 8%。其他两方的股份则相应按比例稀释。（比如，如果拿到 FDA 的临床批文，BP 将拥有 70.2%，如果完成临床一期，BP 将拥有 75.8%，如果完成临床二期，BP 将拥有 81.86%，如果完成临床三期直至获得新药证书和生产批文，BP 将拥有 88.41%。）
9. 若 ZW 主动离职，或 BP 解除与 ZW 聘用关系，对于解除聘用关系前已实现的相关里程碑成果的奖励按以下约定方式处理：
 - 9.1、对由 ZW 提出并作为主要负责人完成研发工作的新药，若处于临床前研究阶段，上述一次性支付的奖励应当是已实现的相关里程碑成果当时的净价值（双方应当在聘用关系结束后三个月内完成里程碑成果净价值协商确认。此净价值应扣除里程碑成果的产生成本）的 20%，且此奖励为终结性的；

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9. 2. 对由 ZW 方提出并作为主要负责人完成研发工作的新药, 若处于临床研究阶段, 则 ZW 有权从以下二种受益方式中选择一种适用:

(1) 根据已实现的相关里程碑成果当时的净价值 (双方应当在聘用关系结束后三个月内完成里程碑成果净价值协商确认, 此净价值应扣除里程碑成果的产生成本), 由 BP 一次性按照上述第五至八条款中的比例给予 ZW 相应金额, 或

(2) 在已实现的相关里程碑成果的未来净收益中享有确定比例 (10%) 的净收益奖励。

77

10. 双方都应严格遵守保密协议;

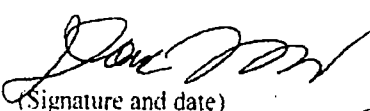
11. 双方在合作过程中如有任何争议, 应本着相互信任、精诚合作的原则协商解决, 如协商不成, 则可通过聘用合同的约定及法律法规的规定, 通过法律途径解决。

In the case of accidental death of ZW, the designated beneficiaries in his will shall be entitled to all of the above-listed profit-sharing benefits including the 3 million shares of Zhejinag Betapharma current stock, 2 million shares of Betapharma Inc (US) stock, and all other awards/benefits described above in item 5 to 9. Their right to these awards/benefits shall be protected by both US and Chinese laws.

In accepting the terms and conditions, please sign your name below to certify your understanding. As company growing, we may make adjustment for your position, compensation, work time and all other terms.

We look forward to your arrival at our company and are confident that you will play a key role in our company's expansion into national and international markets. Please let me know if you have any questions or if I can do anything to make your arrival easier.

Sincerely,


(Signature and date)

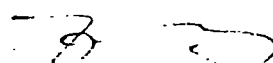
March 26/2010

By Don Zhang, Ph. D.

Representative Of

Beta Pharma, Inc.

(Signature and date)



March 23, 2010

By Zhaoyin Wang, Ph. D.

Redacted

From: z. wang <zwang.ca@gmail.com>
Date: Sat, May 24, 2014 at 6:15 PM
Subject: Re: Legal action against you and BetaPharma US
To: Don Zhang <don.pharmaman@gmail.com>

Hi Don,

I am under pressure to sign an attorney service agreement and it would be irreversible once I sign the service contract with the attorney. I certainly hope we can resolve everything by some other means instead of going through legal procedures. Anyway, June 1st is my deadline to sign the contract and that gives us only a week of time.

Best,

Zhaoyin

Redacted

EXHIBIT D

NNH-CV-13-6035116-S)
GUOJIAN XIE) SUPERIOR COURT
V.) JUDICIAL DISTRICT OF
BETA PHARMA, INC., ET AL.) NEW HAVEN AT NEW HAVEN
) AUGUST 20, 2014

**NON-PARTY DEPONENT'S MOTION TO QUASH AND OBJECTIONS TO
PRODUCTION OF
DOCUMENTS UNDER SUBPOENA**

The undersigned, on behalf of a non-party deponent, Dr. Lance Liu, Esq. ("Attorney Liu"), pursuant to Connecticut Practice Book §§13-5 and 13-28(d) – (e) hereby timely moves both within 15 days of service and before the time for compliance to object to document production requested in and to quash the subpoena duces-ecum served upon him by Beta Pharma, Inc. in this action. A copy of that subpoena is attached hereto as Exhibit 1.

The basis for this motion and objections is mainly threefold:

1. The subpoena is in fact and is intended to be unduly burdensome and overbroad in an attempt to intimidate Attorney Liu and his clients who are parties or witnesses to this litigation.
2. The documents subject to the subpoena were recently produced in a previous legal action in New Jersey Chancery Court Beta Pharma, et al. v, Lance Liu, Superior Court of New Jersey, Chancery Division, Mercer County, Docket No. C-46-14.
3. The subpoena seeks to invade the sanctity of the attorney-client and/or attorney work product privileges.

The requested relief sought by Attorney Liu includes:

1. That the subpoena duces tecum be quashed.
2. That the discovery of privileged materials, previously disclosed materials not be had.
3. That the deposition currently scheduled by agreement at September 15th not be had or that it not be had until parameters are set in place to protect a non-party from undue burden and to protect the attorney-client and work product privileges.
4. That any production required not be had for 45 days from the date of this motion so that a proper review of the files may be conducted without undue pressure.
5. That the expense of the discovery of electronically stored information be borne by the party seeking the information under Practice Book §13-5(9).
6. That any discovery and production requests that are found to be discoverable be clarified to assist the non-party deponent in identifying relevant materials and to limit the scope of inquiry.

BACKGROUND

The instant litigation, to which Attorney Liu is not a party, appears to be an action arising out of sheer corporate greed in which a pharmaceutical company promised and later reneged on the promise to compensate Guojian Xie¹, and certain stockholders and employees or independent contractors. Apparently offended by the attempt to recover the monies owed, the pharmaceutical company is engaging in scorched earth tactics to punish

¹ BetaPharma's former Vice-President and employed medicinal chemist, who synthesized "icotinib," a lung cancer treatment marketed by Zhejiang Beta Pharma Co., Ltd. in the People's Republic of China.

or break the will of its opponents and Attorney Liu.

The subpoena also seeks documents and testimony from Attorney Liu concerning five individuals who have a separate dispute with Beta Pharma concerning repurchase of their shares in Zhejiang Beta Pharma. Their case Shanshan Shao, Hongliang Chu, Qian Liu, Song Lu and Xinshan Kang v. Beta Pharma and Don Zhang, Judicial District of New Haven, Docket Number NNH-CV14-6048646S was just removed to the United States District Court for the District of Connecticut.

The subpoena is one abusive salvo in that dispute. It is notable that defendants would not agree to extend Attorney Liu's time to review the subpoena and file objections which necessitated making the motion to quash at this time.

STANDARD OF LAW

Practice Book '13-29(d) provides in relevant part: "A nonparty deponent may be compelled by subpoena served within this state to give a deposition at a place *within the county of his or her residence or within thirty miles of the nonparty deponent's residence*; or if a nonresident of this state within any county in this state in which he or she is personally served, or at such other place as is fixed by order of the judicial authority.

(emphasis added)

"When presented with a subpoena duces tecum, the subject of that subpoena may file a motion under Practice Book §13-5, which provides in relevant part: "Upon motion *by a party from whom discovery is sought*, and for good cause shown, the judicial authority may make any order which justice requires to protect a party from annoyance, ~~embarrassment, oppression, or undue burden or expense~~, including one or more of the

following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions" (Emphasis added.) The other relevant section is §13-28, which provides in relevant part: "(d) *The person to whom a subpoena is directed* may, within fifteen days after the service thereof . . . serve upon the issuing authority designated in the subpoena written objection to the inspection or copying of any or all of the designated materials . . . (e) The court in which the cause is pending . . . may, upon motion made promptly . . . (1) quash or modify the subpoena if it is unreasonable and oppressive or if it seeks the production of materials not subject to production under the provisions of subsection (c) of this section" (Emphasis added.)

A party may challenge the propriety of a subpoena duces tecum in order to protect the sanctity of professional privilege. The party who holds the privilege or who hold the client information in trust has standing to move for protection from the subpoena on the basis that it seeks privileged information which is an interest which may be harmed. See *Smith v. Rossi, supra*, 37 Conn. L. Rptr. 506 (party has standing to file motion to quash subpoena directed to his physicians seeking disclosure of his medical records); and *Kowalonek v. Bryant Lane, Inc.*, Superior Court, judicial district of Danbury, Docket No. CV 96 0324942 (April 11, 2000, Moraghan, J.) (subpoenaed party appears to have standing to move for a protective order regarding deposition of her former attorney).

In fact, an attorney has such a strong interest in protecting the privilege that the attorney may intervene as of right in an action to protect the privilege where the attorney has been subpoenaed to produce client materials. *In re Katz*, 623 F.2d 122, 125 (2d Cir. 1980).

~~In this context, "[c]ourts have defined good cause as a sound basis or legitimate need~~

to take action . . . Good cause must be based upon a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statement . . . Whether or not good cause exists for entry of a protective order must depend on the facts and circumstances of a particular case." (Citations omitted; internal quotation marks omitted.) *Longwood Engineered Products, Inc. v. Polyneer, Inc.*, Superior Court, judicial district of Windham at Putnam, Docket No. CV 04 0072627 (September 7, 2004, Potter, J.).

a. Attorney-client privilege

The Rules of Professional Conduct provide that an attorney may divulge such materials in certain circumstances. See Rules of Professional Conduct 1.6(a) and (c)(4) ("[a] lawyer shall not reveal information relating to representation of a client" but "[a] lawyer may reveal such information *to the extent the lawyer reasonably believes necessary* to ... [c]omply with ... a court order" [emphasis added]). In doing so, however, an attorney is nevertheless obliged to disclose only what is necessary and to challenge the court order when he or she believes that such disclosure is not necessary. See Rules of Professional Conduct 1.6, commentary. As the commentary to rule 1.6 provides, "[a] fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation." Rules of Professional Conduct 1.6, commentary. Furthermore, "[a] lawyer may be ordered to reveal information relating to the representation of a client by a court.... Absent informed consent of the client to do otherwise, *the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client*

privilege or other applicable law." (Emphasis added.) Rules of Professional Conduct 1.6, commentary. Moreover, "[s]ubsection (c) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in subsections (c)(1) through (c)(4)." Rules of Professional Conduct 1.6, commentary. See generally General Statutes § 1-25. *Woodbury Knoll v. Shipman & Goodwin*, 305 Conn. 750, 764 (2012).

Additionally, rule 8.4 of the Rules of Professional Conduct provides in relevant part that "[i]t is professional misconduct for a lawyer to ... (1) [v]iolate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another...." Thus, a nonparty attorney or law firm faces a real dilemma. Because the attorney is obliged to protect the client's interest, the attorney should challenge any discovery order that requires disclosure of privileged or confidential material. *Woodbury Knoll v. Shipman*, *supra* at 765.

The courts will normally protect this privilege vigorously. *PSE Consulting, Inc. v. Frank Mercede & Sons, Inc.*, 267 Conn. 279, 329-30, 838 A.2d 135 (2004) ("On numerous occasions we have reaffirmed the importance of the attorney-client privilege and have recognized the long-standing, strong public policy of protecting attorney-client communications.... In Connecticut, the attorney-client privilege protects both the confidential giving of professional advice by an attorney acting in the capacity of a legal advisor to those who can act on it, as well as the giving of information to the lawyer to enable counsel to give sound and informed advice.... The privilege fosters ~~full and frank communications between attorneys and their clients~~ and thereby

promote[s] the broader public interests in the observation of law and [the] administration of justice." [Internal quotation marks omitted.]); see also *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 130 S.Ct. 599, 606, 175 L.Ed.2d 458 (2009) ("acknowledg[ing] the importance of the attorney-client privilege, which is one of the oldest recognized privileges for confidential communications" [internal quotation marks omitted]); cf. *Hickman v. Taylor*, 329 U.S. 495, 510–12, 67 S.Ct. 385, 91 L.Ed. 451 (1947) (noting importance of attorney's interest in preserving confidentiality of work product).

In fact, the Connecticut Supreme Court has ruled that it is an abuse of discretion to deny a motion to quash an overbroad subpoena seeking to invade the attorney-client privilege. *Woodbury Knoll*, supra at 786.

b. Privilege Logs are Unnecessary to Assert the Privilege

A privilege log is an additional unnecessary burden which is not necessary where privileged materials are clearly requested. *Woodbury Knoll*, supra at 777. "[W]ith respect to privilege claims generally, we have held that [when] the confidential status of otherwise discoverable information is apparent, a claim of privilege may be disposed of without further inquiry." *Babcock v. Bridgeport Hospital*, supra, 251 Conn. at 847, 742 A.2d 322 Thus, a subpoena which inappropriately sought privileged materials in violation of Practice Book §§ 13–2, 13–26 and 13–28 may be quashed.

Moreover, "[n]o provision of the rules of practice, and no decision by this court or the Appellate Court, requires that any person claiming the attorney-client privilege has

the burden to provide a privilege log at the time the claim of privilege is made." *Woodbury Knoll*, supra at 779. This is especially so where the subject of the subpoena is not a party to the litigation. *Id.* at 779-780.

ARGUMENT OF LAW TO FACTS

Beta Pharma claims that on August 6th, caused an allegedly indifferent person, Ryan Mulcahy, to serve Attorney Liu with a subpoena duces tecum commanding him to appear at a deposition at 150 Trumbull Street, Hartford, Hartford County, Connecticut which is about 37 miles from Dr. Liu's residence in Middlebury, New Haven County, Connecticut. Despite Attorney Liu's residence he is not admitted in Connecticut and is only admitted to practice law in New York and New Jersey.

First, Attorney Liu challenges the subpoena's validity on the grounds that there is no proof that the "indifferent person" was in fact indifferent to this action and requests the opportunity to voir dire the process server.

Second, Attorney Liu challenges the validity of the subpoena on the grounds that it schedules the deposition outside of the county in which he resides and more than 30 miles from his residence as required by Practice Book §13-29(a).

Third, the subpoena purportedly scheduled the deposition for August 29th, 2014 and calls for broad categories of documents, many of which have already been produced to Beta Pharma.

Fourth, the evidence sought relates to privileged communications and documents transmitted, delivered, handled and discussed between Attorney Liu and several of his clients. These clients, including the plaintiff in this lawsuit, are now represented by Jacobs

& Dow, LLC and its member, Jonathan Katz, who has given notice that plaintiff and the other clients object to the disclosure of their privileged communications with Attorney Liu.

Fifth, other documents and information sought to be produced and testified to at the deposition relate to Attorney Liu's consultation with a Connecticut attorney, Jonathan Katz, Esq. with whom Attorney Liu consulted as an attorney with respect to his own potential claims against Beta Pharma and in joint representation with respect to the claims asserted by Attorney Liu's clients who are named in the subpoena. Specifically, the documents relating to Attorney Liu's consultation with his Connecticut attorney are subject to a confidentiality privilege under Rules of Professional Conduct Rule 1.6 (a) which Attorney Liu asserts. The Rules of Professional Conduct in Connecticut and New York and New Jersey are substantially similar. (see copies of Rule 1.6 for NY and NJ attached as Exhibit 2)

The subpoena is overly broad and vague so as to be unduly burdensome and is not limited as to time (in most instances), type or subject matter or to those materials reasonably likely to be relevant, thereby increasing the potential for harm to Attorney Liu's clients and Attorney Liu if disclosed.

Moreover, the subpoena seeks discovery of privileged communications and documents and Attorney Liu's clients have not given authorization to release of any information in his possession relating to his representation of them.

~~Objections to the Subpoenaed Items Pursuant to Practice Book §13-28(d)~~

General Objections:

OBJECTION:

In addition to objections raised above in this motion, Attorney Liu objects to the production of electronically stored information requested in the definition of "documents" stated by the issuing authority. Much of the requested material has either already been produced or would reside on the servers of BetaPharma or its attorneys and therefore is equally available to them. Further the definition presents a burden to Attorney Liu to produce in a non-native format without the assistance of a professional ESI vendor. In addition the definition of electronically stored information is vague and overbroad making compliance impossible.

OBJECTION:

The subpoena instructs Attorney Liu to refrain from disclosing any of the documents requested with other parties to the litigation. This instruction has no basis in the practice book and places an unreasonable and unlawful prior restraint on Attorney Liu's ability to communicate with his clients. In fact, it contradicts Practice Book Section 13-30(f), which provides that "[d]ocuments and things produced for inspection during the examination of the deponent ... may be inspected and copied by any party."

Further, the instruction is vague and overbroad in that it covers all documents possibly responsive to the broad subpoena.

OBJECTION:

With respect to request numbers 1 through 4 of the subpoena, Attorney Liu objects on the grounds that the documents relating to his attorney-client relationship with

BetaPharma have been recently turned over to BetaPharma's NJ counsel appearing in this case during litigation in the NJ Chancery Court in 2014. Therefore the request is duplicative, equally available to BetaPharma and unduly burdensome and meant only to harass and vex the deponent. (See Dr. Liu's affidavit in the NJ action attached as Exhibit 3)

OBJECTION:

With respect to requests 5-through 7, Attorney Liu objects on the grounds that they seek the production of materials protected by the attorney-client privilege between Attorney Liu and Guojian Xie under a prior joint representation with Attorney Katz and separately. It is also unduly vague and burdensome in that fails to make any attempt to specify what materials might fully respond to the request and is unlimited. To the extent the client, Dr. Xie, sought advice regarding issues relating to the instant litigation and in at least one case a matter unrelated to the instant litigation, the disclosure of the same would violate the client's reasonable expectations of privacy and confidentiality. Dr. Xie, through counsel, has objected to the disclosure of privileged material.

OBJECTION:

With regard to request #8(a – d), Attorney Liu objects on the grounds that these requests seek the production of communications and other materials protected by the attorney-client privilege between Attorney Liu and the listed individuals who were clients of Attorney Liu. It is also unduly vague and burdensome in that fails to make any attempt to ~~specify what materials might fully respond to the request and is unlimited.~~ To the extent

the clients identified sought advice regarding issues relating to the instant litigation and in some cases to legal matters having nothing to do with the litigation, the disclosure of the same would violate the client's reasonable expectations of privacy and confidentiality. These former clients of Attorney Liu, through counsel, have objected to the disclosure of privileged material.

OBJECTION:

With regard to request #9, Attorney Liu objects on the grounds that the same is equally available to BetaPharma in that the only document Attorney Liu believes may be responsive to the request is a single power of attorney authorizing Attorney Liu to jointly represent Dr. Xie and Beta Pharma with respect to an application filed with the US Patent & Trademark Office which document is on file at the USPTO and available to Beta Pharma online. In addition, the request is vague and overbroad in that as presently phrased it covers any client at any time without restriction and does not sufficiently define what documents might constitute a waiver or what subject matter the waiver requested covers.

OBJECTION:

With regard to requests 10, 11 and 12, please see objection to request #8.

OBJECTION:

With regard to request #13, Attorney Liu objects on the grounds that the request is vague and overly broad in scope making compliance impossible. The request also seeks documents previously disclosed in the NJ litigation (see objection to requests #1 through

4 above).

OBJECTION:

With regard to requests 14, 15 and 16, see objections to requests #1 through 4 above and the requests seek information relating to employees of BetaPharma. The deponent is unaware of the entire list of employees of BetaPharma and therefore the requests seeks information not within his possession, information which cannot reasonably be identified and which is overbroad and vague in addition to being equally available to BetaPharma, the documents having been previously produced in recent NJ litigation.

OBJECTION:

Attorney Liu objects to the instruction to provide a privilege log in that the request is unduly burdensome, not required by lawful subpoena, not required by law as noted in this motion above, overly broad and vague and seeks only to harass and vex the non-party deponent with expense and effort.

OBJECTION:

Finally with respect to the two areas of requested inquiry at the end of the subpoena, Attorney Liu asserts the attorney-client and or work-product privileges. The proposed subject matter should be quashed because it is also vague, overbroad with reference to time, topic; the subjects are equally available to Beta Pharma as they relate to BetaPharma's internal operations. The request is overbroad in that it does not define "work". Moreover, to the extent that the two areas of inquiry relate to inquiries about the

documents objected to above, the inquiry is objectionable on the same grounds as the respective documents.

WHEREFORE, for all of the foregoing reasons, Attorney Liu respectfully moves this Court to grant his Motion to Quash and his objections to the subpoena duces tecum and protect the attorney-client privilege and a non-party from the burdens of the subpoena of over-reaching and litigious corporate clients and to afford Attorney Liu whatever protections from abusive litigation and discovery tactics the court deems appropriate.

Dr. Lance Liu, Esq.

By 

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ORDER

This motion having been considered by the court, it is hereby GRANTED/DENIED
on this ____ day of _____, 2014.

BY THE COURT _____, J.

CERTIFICATION

THIS IS TO CERTIFY that a copy of the foregoing filed in the electronic filing system of the court and was electronically served on those parties who have requested service in that form and was mailed, postage prepaid, U.S Mail, first class, on this 20th day of August, 2014, to:

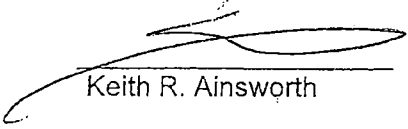
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Keith R. Ainsworth

EXHIBIT E

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SHANSHAN SHAO, HONGLIANG
CHU, QIAN LIU, SONG LU,
AND XINSHAN KANG,
Plaintiffs,

v.

BETA PHARMA, INC., AND
DON ZHANG,
Defendants.

Civil Action No. 3:14CV01177 (CSH)

January 16, 2015

PROTECTIVE ORDER FOR MOTION TO DISQUALIFY COUNSEL

Defendants Beta Pharma, Inc. and Don Zhang ("Defendants") have filed a Motion to Disqualify (Doc #20) Jonathan Katz, Esq. from representing Plaintiffs in this case. Defendants contend that they had an attorney-client relationship with Attorney Lance Liu ("Liu") of the New Jersey bar, arising out of Liu's performance of legal services for Defendants between approximately July 2011 and approximately November 2012. Defendants contend that documents and/or information material to the Motion to Disqualify are protected by the attorney-client privilege, work product immunity, attorney-client confidentiality under Rule of Professional Conduct 1.6, and/or are otherwise confidential. Defendants wish to offer these documents and/or information as evidence with respect to the Motion to Disqualify, while otherwise preserving their claims of attorney-client privilege, work product immunity, attorney-client confidentiality under Rule of Professional Conduct 1.6, and confidentiality. Plaintiffs may also wish to use documents and/or information which either Plaintiffs or Defendants contend are protected by the attorney-client privilege, work product immunity, attorney-client confidentiality

under Rule of Professional Conduct 1.6, and/or confidentiality. The Court held a conference on December 5, 2014 on the use of such materials in connection with the Motion to Disqualify, and the Court Ordered that the "parties shall jointly file a Proposed Protective Order and Confidentiality Agreement" (Doc. #40). Accordingly, the Court orders as follows:

1. In litigating the Motion to Disqualify, any Party to the above-entitled action and any third party shall have the right to designate as "Confidential" any information, document, or thing or portion of any information, document or thing containing: (a) trade secrets, competitively sensitive technical, marketing, financial, sales or other confidential business information, including, but not limited to, internal business practices that would include trade secrets or confidential and/or proprietary information; (b) private or confidential personal information; or (c) information which the producing Party otherwise believes in good faith to be entitled to protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure ("Confidential Material"). Any Party to the above-entitled action who produces, discloses, or seeks to file any Confidential Material, including without limitation, any information, document, thing, pleading, testimony, deposition transcript, exhibit and/or any other such so-designated materials shall mark the same with the foregoing or similar legend:

"CONFIDENTIAL" or "CONFIDENTIAL –
SUBJECT TO PROTECTIVE ORDER AND CONFIDENTIALITY
AGREEMENT (hereinafter "Confidential") DATED January 16, 2015"

2. In litigating the Motion to Disqualify, any Party to the above-entitled action and any third party shall also have the right to designate as "Attorneys' Eyes Only" any information, document, or thing, or portion of any information, document or thing that contains:

- a. highly sensitive business or personal information, the disclosure of which is likely to cause significant harm to an individual or to the business or competitive position of the Designating Party;
- b. attorney-client privileged information;
- c. information protected by work product immunity; and/or
- d. information protected by attorney-client confidentiality under Rule of Professional Conduct 1.6 arising out of, or in connection with, a legal representation.

("Attorneys' Eyes Only Material"). Any Party to the above-entitled action or any third party in connection with this litigation who is covered by this Protective Order and Confidentiality Agreement, who produces, discloses, or seeks to file any Attorneys' Eyes Only Material, including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony deposition transcript, exhibit and/or any other such so-designated materials shall mark the same with the foregoing or similar legend:

"ATTORNEYS' EYES ONLY" or "ATTORNEYS' EYES ONLY
- SUBJECT TO PROTECTIVE ORDER AND CONFIDENTIALITY
AGREEMENT (hereinafter "Attorneys' Eyes Only") DATED January 16, 2015"

3. All Confidential and/or Attorneys' Eyes Only Material produced shall be used by the Parties solely for purposes of litigating the Motion to Disqualify (Doc. #20) and any appeal of a decision on the Motion to Disqualify, subject to the terms of this Order. Such Material shall not be used by the Parties or their counsel for any business, commercial, competitive, personal or other purpose, shall not be used in the litigation for any purpose other than the Motion to Disqualify, and shall not be disclosed, except in accordance with the provisions of this Protective

Order and Confidentiality Agreement, unless and until the restrictions herein are removed either by written agreement of counsel for the Parties, or by Order of the Court.

4. Confidential Material may be disclosed only to the following individuals and/or entities under the following conditions:

- a. Outside counsel (herein defined as any attorney at the law firms representing the Parties in this action) and relevant in-house counsel for the Parties;
- b. Outside experts or consultants retained by outside counsel for purposes of the Motion to Disqualify, provided they have signed an "Agreement To Be Bound By Protective Order and Confidentiality Agreement" in the form attached hereto as Exhibit A, or as otherwise Ordered by the Court;
- c. Secretarial, paralegal, clerical, duplicating and data processing personnel of the foregoing;
- d. In connection with the Motion to Disqualify, the Court and court personnel, including, but not limited to, stenographers transcribing the testimony or argument at any hearing on the Motion to Disqualify;
- e. Any witness who provides testimony in connection with the Motion to Disqualify;
- f. Vendors retained by or for the Parties to assist in preparing for any hearing on the Motion to Disqualify, including, but not limited to, court reporters, litigation support personnel, individuals retained to prepare demonstrative and audiovisual aids for use in the courtroom, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials;
- g. The Parties. In the case of parties that are corporations or other business entities, "Party" shall mean directors, officers, partners and employees of the Parties, or

any subsidiaries or affiliates thereof, as well as any and all personnel who are, or may be, required to participate in decisions with reference to the above-entitled action; and

h. Any other person and/or entity only upon Order of the Court or by the written consent of the Parties.

5. Material produced and/or marked as Attorneys' Eyes Only may only be disclosed

to:

- a. Outside counsel for the Parties;
- b. secretarial, paralegal, clerical, duplicating, and data processing personnel of Outside counsel;
- c. Outside experts or consultants retained by Outside counsel for purposes of the Motion to Disqualify, provided they have signed an "Agreement To Be Bound By Protective Order and Confidentiality Agreement" in the form attached hereto as Exhibit A, or as otherwise Ordered by the Court;
- d. Such other persons as counsel for the Parties agree in writing in advance of such disclosure, or as Ordered by the Court; and
- e. In connection with the Motion to Disqualify, the Court and court personnel, including, but not limited to, stenographers transcribing the testimony or argument at any hearing on the Motion to Disqualify.

6. A Party's designation of any document as Confidential or Attorneys' Eyes Only Material shall not of itself create any new privilege, or restore any privilege that has previously been waived by the Designating Party. Nor will the Designating Party claim that its disclosure of Confidential or Attorneys' Eyes Only Material pursuant to this Order gives rise to any new

basis for disqualification of the Receiving Party's counsel or law firm in this case, or in any other case in which Receiving Party's counsel or law firm are or may become adverse to the Designating Party or its affiliates, including specifically Guojian Xie v. Beta Pharma, et al., Superior Court, Complex Litigation at Waterbury, Docket No. UWY-CV13-6025526S, Wang v. Beta Pharma, et al., United States District Court, District of Connecticut Civil No. 3:14-cv-01790-VLB, and Beta Pharma et al., v. Liu, Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-2040-14. For the avoidance of doubt, nothing in this Order is intended to or shall in any way prohibit or limit any Party from seeking the disqualification of opposing counsel on grounds independent of the disclosure of information pursuant to this Order, including, but not limited to, grounds which arose prior to the entry of this Order and violations of this Order, and nothing in this Order is intended to or shall in any way impair the grounds for disqualification already asserted by any Party hereto.

7. The Designating Party will use reasonable care to avoid designating as Confidential or Attorneys' Eyes Only any document that does not need to be designated as such.

8. The Receiving Party may submit a request in writing to the Designating Party that the Confidential or Attorneys' Eyes Only designation be modified or withdrawn. If the Designating Party does not agree to the redesignation within ten days, the Receiving Party may apply to the Court for relief. Upon any such application, the burden shall be on the Designating Party to show why the designation is proper. Before serving a written challenge, the objecting party must attempt in good faith to meet and confer with the Designating Party in an effort to resolve the matter. The document shall remain Confidential, Attorneys' Eyes Only, and/or sealed until the final determination of any challenge to its designation.

9. In the event that a Party believes that any testimony or argument from a hearing on the Motion to Disqualify contains Confidential or Attorneys' Eyes Only Material, such Party may designate such testimony or argument as Confidential or Attorneys' Eyes Only by: (i) stating orally on the record on the day the testimony or argument is given that portions of the testimony and/or argument are deemed Confidential or Attorneys' Eyes Only; or (ii) sending written notice to all Parties within ten days after receipt of the transcript setting forth the page and line numbers of the testimony and/or argument to be designated Confidential or Attorneys' Eyes Only, which period may be extended by agreement of the Parties. During these ten days, no such transcript shall be disclosed to any individuals or entities other than the individuals permitted access to Attorneys' Eyes Only Material under this Protective Order and Confidentiality Agreement. Upon being informed that certain portions of a hearing are to be designated as Confidential or Attorneys' Eyes Only, all Parties shall immediately cause each copy of the transcript in their custody or control to be appropriately marked and limit disclosure of that transcript in accordance with the terms and provisions of this Protective Order and Confidentiality Agreement. Until expiration of the ten day period, all testimony and argument on the Motion to Disqualify shall be deemed Attorneys' Eyes Only and treated as if so designated.

10. If the need arises during litigation of the Motion to Disqualify for any Party to disclose Confidential or Attorneys' Eyes Only Material to the Court, the Party may only do so under seal. The Party seeking to disclose such information must:

- a. pursuant to Rule 5(e)(4)(d) of the Local Rules of the U.S. District Court for the District of Connecticut, submit the documents sought to be sealed to chambers for in camera consideration and serve on all counsel of record copies of the

documents sought to be sealed and shall file a motion to seal, a memorandum and supporting documents. The motion to seal shall include a statement of the moving counsel that (1) he or she has inquired of opposing counsel and there is agreement or objection to the motion to seal, or that (2) despite diligent effort, he or she cannot ascertain opposing counsel's position.

11. To the extent consistent with applicable law, the inadvertent or unintentional disclosure of Confidential and/or Attorneys' Eyes Only Material that should have been designated as such, regardless of whether the information, document or thing was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part, of a Party's claim of confidentiality, either as to the specific information, document or thing disclosed or as to any other material or information concerning the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by notifying in writing counsel for all Parties to whom the material was disclosed that the material should have been designated Confidential and/or Attorneys' Eyes Only within a reasonable time after disclosure. Such notice shall constitute a designation of the information, document or thing as Confidential and/or Attorneys' Eyes Only under this Protective Order and Confidentiality Agreement.

12. If any Party in receipt of Confidential or Attorneys' Eyes Only Material is served with a subpoena, request for production of documents, or other similar legal process in another proceeding (including any proceeding before any other court, regulatory agency, law enforcement or administrative body) seeking such Confidential or Attorneys' Eyes Only Material, and that Party does not hold the privilege, immunity, and/or right to confidentiality, that Party shall give prompt written notice to the Party holding such privilege, immunity, and/or right, through its undersigned counsel, sufficiently in advance of any disclosure to provide the

Party holding such privilege, immunity, and/or right with a reasonable opportunity to assert any objection to the requested production. If the Party holding such privilege, immunity, and/or right objects to the production, that Party's Confidential or Attorneys' Eyes Only Material shall not be produced except (i) pursuant to an Order by the Court requiring compliance with the subpoena, request for production, or other legal process, or (ii) if such subpoena, request or legal process is of the kind where the obligation to produce in a timely manner cannot be excused or deferred by interposing a written objection. The Party holding such privilege, immunity, and/or right shall be solely responsible for asserting any objection to the requested production. Nothing herein shall be construed as requiring the recipient or anyone else covered by this Protective Order and Confidentiality Agreement to challenge or appeal any such subpoena, request, legal process or order requiring production of Confidential or Attorneys' Eyes Only Material covered by this Protective Order and Confidentiality Agreement, or to subject itself to any penalties for noncompliance with any such Order, or to seek any relief from this Court.

13. Pursuant to F.R.E. 502(d), any disclosure of information or materials that are protected by the attorney-client privilege or the work product doctrine in connection with the Motion to Disqualify shall not, for any purposes, be deemed a waiver of the attorney-client privilege or the work product doctrine in this or any other proceedings.

14. If a Party intends to rely upon any documents when litigating the Motion to Disqualify, the party must either:

- a. Comply with the sealing procedures in paragraph 11 above; or
- b. Disclose the documents to opposing counsel at least four (4) business days prior to filing the papers with the Court in connection with the Motion to Disqualify, so

that the opposing Party may make an appropriate designation of the documents and file a Motion to Seal, if necessary.

15. This Protective Order and Confidentiality Agreement is being entered without prejudice to the right of any Party to move the Court for modification or for relief from any of its terms.

16. This Protective Order and Confidentiality Agreement shall survive the termination of this action and shall remain in full force and effect unless modified by an Order of this Court or by the written stipulation of the Parties filed with the Court.

17. Upon final conclusion of the Motion to Disqualify, each Party and its outside counsel and/or any other individual subject to the terms and provisions of this Protective Order and Confidentiality Agreement shall be under an obligation to assemble and to return to the originating source all originals and marked and unmarked copies of documents and things containing Confidential and/or Attorneys' Eyes Only Material and to destroy, should such source so request, all copies of Confidential and/or Attorneys' Eyes Only Material that contain and/or constitute attorney work product as well as excerpts, summaries, notes and digests revealing Confidential and/or Attorneys' Eyes Only Material; provided, however, that counsel may retain complete copies of all transcripts and pleadings including any exhibits attached thereto for archival purposes, subject to the provisions of this Protective Order and Confidentiality Agreement. If a Party requests the return of Confidential and/or Attorneys' Eyes Only Material from the Court after the final conclusion of the Motion to Disqualify, including the exhaustion of all appeals therefrom and all related proceedings, the Party shall file an appropriate motion seeking such relief.

18. A Party may de-designate any Confidential and/or Attorneys' Eyes Only Material that the Party, itself, has previously designated.

IT IS SO ORDERED.

Dated: New Haven, Connecticut
January 16, 2015

Charles S. Haight, Jr.

CHARLES S. HAIGHT, JR.
SENIOR UNITED STATES DISTRICT JUDGE

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SHANSHAN SHAO, HONGLIANG
CHU, QIAN LIU, SONG LU,
AND XINSHAN KANG,
Plaintiffs,

v.

BETA PHARMA, INC., AND
DON ZHANG,
Defendants.

Civil Action No. 3:14CV01177 (CSH)

January 16, 2015

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER AND CONFIDENTIALITY
AGREEMENT

I, _____, being duly sworn, under the penalties of perjury, state
that:

1. My address is _____.

2. My present employer is _____ and the address of my
present employment is _____.

3. My present occupation or job description is _____.

4. I hereby certify my understanding that certain Confidential or Attorneys' Eyes
Only Material is being provided to me pursuant to the terms and provisions of the Protective
Order and Confidentiality Agreement dated _____ in connection with the above-entitled
action.

5. I have carefully read and understood the provisions of the Protective Order and
Confidentiality Agreement in the above-entitled action, and I hereby agree that I will comply
with all terms and provisions of the Protective Order and Confidentiality Agreement.

5. I will hold in confidence and not disclose to anyone not so-designated under the terms and provisions of the Protective Order and Confidentiality Agreement Confidential or Attorneys' Eyes Only Material, or any words, summaries, abstracts, or indices of Confidential or Attorneys' Eyes Only Material disclosed to me.

6. I will limit use of Confidential or Attorneys' Eyes Only Material disclosed to me solely for purpose of the prosecution or defense of the Motion to Disqualify in the above-captioned action.

7. No later than the final conclusion of this litigation, I will return and/or certify that I have returned all Confidential or Attorneys' Eyes Only Material, and any non-privileged words, summaries, abstracts, and indices thereof, which have come into my possession, as well as any materials, documents, information and/or things which I have prepared relating thereto, to counsel for the Party for whom I was employed or retained.

I declare under penalty of perjury that the foregoing is true and correct.

Dated:

Signature: _____

Printed name: _____

Title and Company: _____

Address: _____

EXHIBIT F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

SHANSHAN SHAO, HONGLIAN CHU,
QIAN LIU, SONG LU, AND XINSHAN
KANG,

Plaintiffs,

v.

BETA PHARMA, INC., AND DON ZHANG

Defendants.

3:14-CV-01177 (CSH)

January 16, 2015

OPINION ON PROPOSED PROTECTIVE ORDERS

HAIGHT, Senior District Judge:

In a Protective Order (Doc. #47) entered today, the Court set forth the terms and conditions that shall govern the parties' dissemination of certain documents relevant to the Court's disposition of Defendants' motion to disqualify Plaintiffs' counsel (Doc. #20). The Protective Order was informed by a proposed protective order and statement in support submitted by Plaintiffs (Doc. #42), and a proposed protective order and statement in support submitted by Defendants (Doc. #43). The proposed protective orders were similar in certain respects, but differed in material ways. The statements in support highlighted those differences and described the points of contention that left the parties unable to submit a *joint* proposed protective order. This Opinion resolves the dispute between the parties reflected in their opposing proposals and supporting statements. It is meant as an explanation of the Court's iteration of those proposals which has become the Protective Order (Doc. #47) docketed today.

I. INTRODUCTION

The Court first sets forth the underlying facts and procedural posture of this litigation.

A. Background

The following facts are derived from Plaintiffs' Complaint, and are accepted as true for the purposes of this Opinion.

Plaintiffs are Shanshan Shao, Honglian Chu, Qian Liu, Song Lu, and Xinshan Kang. Defendants are Beta Pharma, Inc. ("BP") and Don Zhang. BP is a pharmaceutical company. Zhang is its president and majority stockholder. Doc. [1-1], *Complaint* at ¶¶ 1, 3. In or around 2002, BP joined with other investors to form a joint venture to develop, test, and market its patented technology in the People's Republic of China ("China"). *Id.* at ¶ 5. The joint venturers formed Zhejiang Beta Pharma Co. Ltd., ("ZBP"), a privately owned corporation organized under the laws of China. *Id.* at ¶ 6. BP owned a 45 percent interest in ZBP. *Id.* at ¶ 7

In 2010 and 2011, BP, acting through Zhang, who was also vice president of ZBP, sold shares of ZBP to Plaintiffs. *Id.* at ¶ 9. The contracts memorializing those transactions provided that BP would hold Plaintiffs' shares under the name of BP until Defendants could register Plaintiffs' ownership interest on the books of ZBP. *Id.* at ¶¶ 10-11. In a later agreement reached in or around July 2013, Defendants represented to Plaintiffs that they would repurchase Plaintiff's shares in ZBP at a price set proportionate to ZBP's \$600 million valuation. *Id.* at ¶ 16.

This lawsuit arises from Plaintiffs' claims that Defendants have neither registered their shares of ZBP nor honored the repurchase agreement. *Id.* at ¶ 19. They charge BP or Zhang with breach of contract, breach of fiduciary duty, and negligent and fraudulent misrepresentation. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332.

B. Procedural Posture

Before the commencement of any substantial discovery, Defendants filed a motion to

disqualify Plaintiff's attorney, Jonathan Katz, based on his association with attorney Lance Liu, Defendants' former attorney. Doc. [20]. Defendants claim that they had an attorney-client relationship with Liu from approximately July 2011 to November 2012. They seek to disqualify Katz based on a belief that Liu had an opportunity to disclose confidential and privileged information relevant to this litigation to Katz. Plaintiffs oppose the motion to disqualify. The Court stayed all deadlines pending its disposition.

Prior to the due of date of Defendants' reply to Plaintiffs' opposition, the Court, upon Defendants' motion, held a telephone conference to discuss the appropriate method for Defendants to place before the Court certain documents it claims are relevant to the Court's consideration of the motion to disqualify. Doc. [40]. Defendants sought a way to include those documents in their reply brief while preserving their claims of attorney-client privilege, work product immunity, and attorney-client confidentiality. With that purpose in mind, the Court directed the parties to file jointly a proposed protective order and confidentiality agreement describing the terms and conditions of the dissemination of the documents relevant to the Court's disposition of the motion to disqualify, or alternatively, a statement from each party describing the points of contention impeding its submission. Doc. [40].

The parties filed separate proposed protective orders, having been unable to agree on a joint proposal. They are attached to submissions on the docket styled as Plaintiffs' proposed motion for protective order (Doc. #42) and Defendants' response in opposition (Doc. #43).

II. DISCUSSION

Plaintiffs raise two fundamental issues with respect to Defendants' proposed protective order.

Plaintiffs first contend that Defendants' proposed protective order does not require

Defendants to make a showing that the materials they intend to submit in support of the motion to disqualify are in fact protected as attorney-client or work-product privileged material, and not, as the case may be, materials to which the privilege has already been waived. Plaintiffs argue that if Defendants are not required to make that initial showing, then Plaintiffs will be required to "blindly . . . accept . . . [D]efendants' characterization" of those documents as privileged. Doc. [42] at 2. They argue that Defendants should at least be required to set forth their claims of privilege in a privilege log of the sort required by Fed. R. Civ. P. 26(b)(5)(A).

Defendants' proposed protective order does not impose a requirement to set forth claims of privilege in a privilege log pursuant to Rule 26(b)(5)(A). Nor would it, since that Rule, and its counterpart in the Local Rules, apply to documents *withheld* from discovery as opposed to documents *produced* in support of a motion. See D. Conn. Loc. R. 26(e) ("This rule requires preparation of a privilege log with respect to all documents withheld on the basis of a claim for privilege or work product protection."). But even without a privilege log, Defendants' proposed protective order does not prejudice Plaintiffs in the way they imagine. Paragraph eight of that proposal provides a mechanism by which Plaintiffs can challenge that designation. Doc. [43-1] at ¶ 8.¹ Alternatively, should Defendants file a motion to seal documents on grounds that they are

¹Paragraph eight states in its entirety:

The Receiving Party may submit a request in writing to the Designating Party that the Confidential or Attorneys' Eyes Only designation be modified or withdrawn. If the Designating Party does not agree to the redesignation within ten days, the Receiving Party may apply to the Court for relief. Upon any such application, the burden shall be on the Designating Party to show why the designation is proper. Before serving a written challenge, the objecting party must attempt in good faith to meet and confer with the Designating Party in an effort to resolve the matter. The document shall remain

protected under the attorney-client privilege, work-product doctrine, or some other privilege, Plaintiffs are free to file an objection to the motion to seal. *See* D. Conn. Loc. R. 5(e)(6) ("Any party may oppose a motion to seal or may move to unseal a case or document subject to a sealing order"). Accordingly, the Court's Protective Order does impose a requirement on the parties to set forth claims of privilege in a privilege log.

Plaintiffs also oppose Defendants' proposed protective order on grounds that it permits Defendants to exclude Plaintiffs themselves from viewing the evidence in support of the motion to disqualify and appearing at any argument or hearing held on the motion. Plaintiffs take specific issue with the "Attorneys' Eyes Only" ("AEO") designation contemplated in Defendants proposal, which allow documents to be viewed by Plaintiffs' counsel but not by Plaintiffs themselves. Defendants assert that Plaintiffs have no right to see certain privileged material that have no bearing on Plaintiffs' case, while counsel for Plaintiffs argue that it is crucial for his clients to see those documents lest he be put in the position of having to tell his clients, "I was disqualified but cannot tell you why." Doc. [42] at 3.

The Court sees no reason why at this early stage — before it has even decided whether to hold oral argument on the motion to disqualify — it should enter an order excluding the public, and Plaintiffs themselves, from an argument on the motion. "Before excluding the public from such proceedings, the Court must make particularized findings on the record demonstrating the need for the exclusion" that is "narrowly tailored to serve the purpose of the closure." D. Conn. Loc. R.

Confidential, Attorneys' Eyes Only, and/or sealed until the final determination of any challenge to its designation.

Doc. [43-1] at ¶8.

5(e)(1)(a). The Court cannot make such particularized findings or fashion such a narrowly tailored order at this point in the proceedings. Accordingly, paragraph ten of Defendants' proposed protective order, which exempts Plaintiffs and the public from an exhaustive list of those who may appear at any hearing on the motion to disqualify, is not included in the Court's Protective Order.

The Court is also not persuaded by counsel for Plaintiffs' claim that his clients have a right to see Defendants' attorney-client and work-product privileged materials. Those documents purportedly relate to Attorney Liu's representation of Defendants in 2011 and 2012, and will be submitted for the purpose of disqualifying Plaintiffs' counsel. They do not relate to Plaintiffs' underlying claims. They are, however, documents that Plaintiffs' counsel must view in order to defend against the motion to disqualify. The AEO designation provides an adequate mechanism by which Plaintiffs' counsel may view documents produced with respect to the motion to disqualify. Defendants' motion to disqualify counsel turns on questions of law. Plaintiffs' lay clients do not need to see such documents.

The Court is also not persuaded by counsel for Plaintiffs' claim that he will be put in a position of not being able to tell his clients why he has been disqualified. The motion to disqualify and Plaintiffs' opposition thereto have not been filed under the seal. They are available to Plaintiffs, and to the public. So is this Opinion. Should Plaintiffs' counsel be disqualified from representing Plaintiffs, it will be because the Court granted the motion to disqualify, which seeks to disqualify Plaintiffs' counsel based on his association with Attorney Liu. He can explain as much to his clients without having to show them the privileged documents in question.

Defendants' proposed protective order creates two classes of confidential documents by way of "Confidential" and "AEO" designations. Doc. [43-1] at ¶¶ 1-2. That proposed protective order

lists the persons that may view documents assigned each designation. *Id.* at ¶¶ 4-5. The proposal in this respect contemplates an agreement between the parties by which either side has "the right to designate" documents as Confidential or AEO. *Id.* at ¶¶ 1-2. Though these designations are useful for purposes of marking items passed between the parties through discovery on the motion to disqualify, the distinction between Confidential and AEO documents is not material to the Court's review of the documents. Rather, the Court's review of the documents is addressed in paragraph eleven of Defendants' proposal, which provides that the parties may file documents marked with either designation under seal pursuant to Local Rules 5(e)(4)(a) and 5(e)(4)(c).

During the Court's December 5 telephone conference, the parties raised their principle concerns with respect to filing documents under seal and the limitations of the Local Rules related to the sealing of documents or the preservation of claims of privilege. Defendants' principle concern was fashioning a mechanism to file documents under seal without such submissions being deemed a waiver of the attorney-client privilege or work-product doctrine. Defendants' proposal addresses that concern. Doc. [43-1] at ¶ 11 (explaining that pursuant to F.R.E. 502(d) disclosure of privileged material will not be deemed a waiver of the privilege). Pursuant to F.R.E. 502(d), nothing that a party submits or discloses in connection with the motion to disqualify counsel will be deemed a waiver of that party's right to assert, in continuing litigation, that the documents in question are privileged.

One of Plaintiffs' principle concerns raised at the telephone conference was an assurance that their counsel be given an opportunity to view the documents filed under seal so that he might fairly address Defendants' disqualification arguments based upon those documents. In spite of the Court's direction to the parties to work together to address each other's respective concerns, Defendants'

proposed protective order does not even attempt to fashion a mechanism by which Plaintiffs' counsel may view and respond to documents filed under seal.

The references to Local Rules 5(e)(4)(a) and 5(e)(4)(c) in paragraph eleven of Defendants' proposed protective order do not require Defendants to disclose the documents filed under seal to opposing counsel. Irrespective of the parties' right to mark documents as "Confidential" or "AEO," Defendants' proposed protective order provides that documents may be filed in connection with a motion to seal pursuant to Local Rules that impose no requirement on the disclosing party to serve the documents sought to be sealed on opposing counsel. It is as if the parties did not even try to develop a joint proposal.

The mechanism by which sealed documents may be filed under seal and yet not served on opposing counsel, is underscored in paragraph fifteen of Defendants' proposed protective order. That paragraph states in its entirety:

If a Party intends to rely upon any documents when litigating the Motion to Disqualify, the party must *either*:

- (a) Comply with the sealing procedures in paragraph 11; *or*
- (b) Disclosure the documents to opposing counsel at least four (4) business days prior to filing the papers with the Court in connection with the Motion to Disqualify, so that the opposing Party may make an appropriate designation of the documents and file a Motion to Seal, if necessary.

Doc. [43-1] at ¶ 15 (emphasis added). The provision makes crystal clear that there is no requirement to disclose documents filed in connection with a motion to seal to opposing counsel. As provided in subpart (a) of that paragraph, the party relying on the documents has the option of filing documents pursuant to the "sealing procedures in paragraph 11," which impose no disclosure

requirement.²

Local Rule 5(e)(4)(d), which is not referenced anywhere in Defendants' proposal, requires a party seeking to file a document under seal to "serve on all counsel of record copies of the documents sought to be sealed." *Id.* The mechanism provides opposing counsel with the documents sought to be sealed, and thus fair opportunity to respond to arguments based upon them. Sealing procedures pursuant to that rule were included in the Protective Order for that reason.

III. CONCLUSION

The Protective Order entered today could have easily been agreed to by the parties. Instead, the parties called upon the Court to decide some of its terms. The task required an explanation and this Opinion. The parties are advised to resolve discovery disputes in good faith before seeking the Court's intervention.

The Court takes no position on Defendants' motion to disqualify Plaintiffs' counsel (Doc. #20). Nor could it, since the motion is not ripe for adjudication and the evidence has not been heard.

The Court will set a briefing scheduling on the motion to disqualify counsel in a separate Order to follow.

The Court entered the Protective Order (Doc. #47) for the reasons stated in this Opinion.

Dated: New Haven, Connecticut
January 16, 2015

/s/ Charles S. Haight, Jr.
CHARLES S. HAIGHT, JR.
Senior United States District Judge

²Defendants state that purpose of paragraph fifteen is to "provide[] a procedure for a case in which one party possess and wishes to use another party's confidential document that it obtained by a means other than production by the other party." Doc. [43] at 6.